

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY,
Plaintiff

vs.

**NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.,**
Defendant

: CIVIL ACTION

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No: 07-3167

ORDER

AND NOW, this day of , 2007, upon consideration of Plaintiff's
Request to Extend Discovery and Defendant's Opposition to Plaintiff's Request to Extend
Discovery, the Request to Extend Discovery is DENIED.

BY THE COURT:

J.

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANE ROSETSKY,
Plaintiff

vs.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.,
Defendant

: CIVIL ACTION
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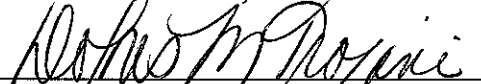
No: 07-3167

**RESPONSE OF NATIONAL BOARD OF MEDICAL EXAMINERS
IN OPPOSITION TO PLAINTIFF'S REQUEST TO EXTEND DISCOVERY**

Defendant, The National Board of Medical Examiners ("NBME"), by and through its undersigned counsel, opposes Plaintiff's Request to Extend Discovery, and in support of its Opposition, submits herein Defendant's Opposition to Plaintiff's Request to Extend Discovery. Defendant relies on the accompanying Memorandum of Law in Support of its Opposition to Plaintiff's Request to Extend Discovery, which is incorporated by reference as if fully set forth herein.

Respectfully submitted,

TROIANI/KIVITZ, L.L.P.



Bebe H. Kivitz, Esquire

I.D. No: 30253

Dolores M. Troiani, Esquire

I.D. No: 21283

38 North Waterloo Road

Devon, PA 19333

(215) 688-8400

DATE: 11/15/07

Attorneys for Defendant
National Board of Medical Examiners Of
The United States of America, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY,
Plaintiff

VS.

**NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.,
Defendant**

: CIVIL ACTION

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No: 07-3167

**OPPOSITION OF DEFENDANT
NATIONAL BOARD OF MEDICAL EXAMINERS TO
PLAINTIFF'S REQUEST TO EXTEND DISCOVERY**

TO THE HONORABLE, THE JUDGES OF THE SAID COURT:

Defendant National Board of Medical Examiners of the United States of America, Inc. (“NBME”), by and through it’s counsel, Troiani/Kivitz, L.L.P. responds to Plaintiff’s Request to Extend Discovery as follows:

1. Admitted.
2. Admitted.
3. Denied that plaintiff has completely responded; NBME's Motion to Compel

Discovery Responses remains pending, because defendant does not yet have the necessary authorizations to obtain plaintiff's medical records or tax returns.

4. Admitted.
5. Admitted only that plaintiff attempted to schedule for the first time on November 8, 2007, five (5) depositions, all to take place on November 15, 2007.
6. Admitted in part; denied in part. Defendant admits that plaintiff served her first and only Notice of Deposition on November 8, 2007, noticing five (5) depositions of NBME employees, all for November 15, 2007, in two hour intervals (Exhibit "A"), the fifth one to begin

at 5:00 p.m. It is specifically denied that plaintiff expected five (5) depositions to take place on November 15, 2007, or made any reasonable effort to schedule or take depositions during the discovery period. Defendant's counsel wrote to plaintiff's counsel concerning her unavailability on November 15, 2007 (Exhibit "B").

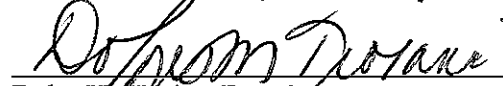
7. Admitted only that plaintiff seeks an extension, not that she has stated reasonable cause such that the Court should grant one.

8. Admitted.

WHEREFORE, Defendant NBME respectfully requests that Plaintiff's Request to Extend Discovery be denied.

DATE: 11/15/07

TROIANI/KIVITZ, L.L.P.



Bebe H. Kivitz, Esquire

I.D. No: 30253

Dolores M. Troiani, Esquire

I.D. No: 21283

38 North Waterloo Road

Attorneys for Defendant
National Board of Medical Examiners Of
The United States of America, Inc.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY,
Plaintiff

vs.

**NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.,**
Defendant

: CIVIL ACTION
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: No: 07-3167
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**MEMORANDUM OF LAW IN SUPPORT OF OPPOSITION
TO PLAINTIFF'S MOTION TO EXTEND DISCOVERY**

On September 7, 2007, the Court set a deadline of November 16, 2007, for the close of discovery. Plaintiff did not attempt to notice any depositions before November 8, 2007. On November 8, 2007, without checking the availability of counsel or the deponents in advance, plaintiff's counsel telecopied a Notice of Deposition (Exhibit "A") for five depositions to take place on November 15, 2007, in two (2) hour intervals, without a break, and with the last deposition to commence at 5:00 p.m. Defendant's counsel immediately notified counsel that she was already scheduled for a deposition in another case (Exhibit "B").

This Court's procedures are very clear that it favors short discovery periods, and the Court reinforced this at the September 7, 2007, conference. Thus NBME acted accordingly, complying with the Court's schedule. NBME timely provided over three thousand (3,000) documents in response to plaintiff's discovery request. Additionally, even though it meant

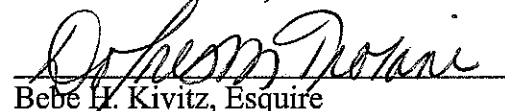
taking plaintiff's deposition before all third party documents had been received, NBME did so.¹ Defendant's counsel was at all times agreeable to discussing convenient days for defense depositions with plaintiff's counsel throughout the discovery period. Still, plaintiff's counsel did not attempt to contact counsel, check the availability of the deponents, or to schedule any depositions until just five (5) business days before the close of discovery.

Motions to extend discovery -- like plaintiff's here -- may be denied where cause is not demonstrated. See e.g., Rose v. City of Allentown, 2005 U.S. Dist LEXIS 2248 (E.D. Pa. 2004). (Plaintiff's failure to conduct discovery demonstrated a "lack of appreciation of the meaning of a judicial order . . . and violates the spirit of the November 26, 2002 scheduling conference where deadlines were established . . ."); Breslin v. Bethlehem Steel, 1987 U.S. Dist LEXIS 10972 (E.D. Pa. 1987) (court noting that the stated reason for the request, that "due to certain business commitments and a trial, the attorney for plaintiff had been unable to meet the schedule as set by Judge Huyett" was not an adequate basis). Here, plaintiff's counsel has not demonstrated reasonable cause why the discovery deadline set by the Court should now be extended.

For all of the above reasons, Defendant NBME respectfully requests that plaintiff's Motion to Extend Discovery be denied.

Respectfully submitted,

TROIANI/KIVITZ, L.L.P.


Bebe H. Kivitz, Esquire

I.D. No: 30253

Dolores M. Troiani, Esquire

I.D. No: 21283

DATE: 11/15/07

¹ Defendant's counsel also notes that she called Mr. Jennings's office two (2) days before plaintiff's October 16, 2007, deposition to request that plaintiff's October 16, 2007 deposition be continued several days, because counsel's close friend's mother, herself also a client, had passed away, and the funeral was scheduled on October 16, 2007, at 11:00 a.m. Mr. Jennings's office declined because "plaintiff had already taken the day off from work". At plaintiff's deposition, however, plaintiff testified that she was not employed.

38 North Waterloo Road
Devon, PA 19333
(215) 688-8400

Attorneys for Defendant
National Board of Medical Examiners Of
The United States of America, Inc.

CERTIFICATE OF SERVICE

I, Bebe H. Kivitz, hereby certify that the foregoing Opposition of Defendant National Board of Medical Examiners to Plaintiff's Request to Extend Discovery was filed electronically and is available for viewing and downloading from the ECF system. I further certify that a true and correct copy of said document was served via regular First Class mail, postage prepaid, on the following:

Rufus A. Jennings, Esquire
Timothy M. Kolman & Associates
225 North Flowers Mill Road
Langhorne, PA 19047

Troiani/Kivitz, LLP

BY: /s/ Dolores M. Troiani
Bebe H. Kivitz, Esquire
Dolores M. Troiani, Esquire
Attorneys for Defendant

Date: November 15, 2007

EXHIBIT “A”

TIMOTHY M. KOLMAN ESQ.
AND ASSOCIATES
LAW OFFICES

225 N. FLOWERS MILL ROAD
THE SHOPPES AT FLOWERS MILL
LANGHORNE, PA 19047

(215) 750-3134
FACSIMILE (215) 750-3138

November 8, 2007

Via facsimile (610) 688-8426 and first-class mail.

Bebe H. Kivitz, Esquire
Troiani/Kivitz, LLP
38 North Waterloo Road
Devon, PA 19333

Re: *Rosetsky v. National Board of Medical Examiners*
E.D. Pa. Case No. 07-3167

Dear Ms. Kivitz:

Enclosed please find Notices of Depositions for Thursday, December 15, 2007 of Kathy Holtzman, Barbara Davidson, Kieran Hussey, Faith Balsama and Debbie Shelmire to take place at the office of Timothy M. Kolman & Associates.

Very truly yours,

TIMOTHY M. KOLMAN AND ASSOCIATES

By: _____


Andrea Fiorentino, Paralegal

/amf

Enclosures

cc: Diane Rosetsky
 R&K Reporting

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

NOTICE OF DEPOSITION

Please take notice that on **Thursday, November 15, 2007**, beginning at **9:00 A.M.** counsel for Plaintiff will take the deposition on oral examination of **Kathy Holtzman**. The deposition will be held at the offices of Timothy M. Kolman & Associates, 225 N. Flowers Mill Road, Langhorne, PA 19047 pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer authorized by law to administer oaths. The deposition will continue from day to day until completed. You are invited to attend and participate therein.

TIMOTHY M. KOLMAN AND ASSOCIATES

By:



Wayne A. Ely, Esquire

November 8, 2007

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

DIANE ROSETSKY

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

NOTICE OF DEPOSITION

Please take notice that on **Thursday, November 15, 2007**, beginning at **11:00 A.M.** counsel for Plaintiff will take the deposition on oral examination of **Barbara Davidson**. The deposition will be held at the offices of Timothy M. Kolman & Associates, 225 N. Flowers Mill Road, Langhorne, PA 19047 pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer authorized by law to administer oaths. The deposition will continue from day to day until completed. You are invited to attend and participate therein.

TIMOTHY M. KOLMAN AND ASSOCIATES

By:


Wayne A. Ely, Esquire

November 8, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

NOTICE OF DEPOSITION

Please take notice that on **Thursday, November 15, 2007**, beginning at **1:00 P.M.** counsel for Plaintiff will take the deposition on oral examination of **Kieran Hussey**. The deposition will be held at the offices of Timothy M. Kolman & Associates, 225 N. Flowers Mill Road, Langhorne, PA 19047 pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer authorized by law to administer oaths. The deposition will continue from day to day until completed. You are invited to attend and participate therein.

TIMOTHY M. KOLMAN AND ASSOCIATES

By:



Wayne A. Ely, Esquire

November 8, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY

Plaintiff,

v.

NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

NOTICE OF DEPOSITION

Please take notice that on **Thursday, November 15, 2007**, beginning at **3:00 P.M.** counsel for Plaintiff will take the deposition on oral examination of **Faith Balsama**. The deposition will be held at the offices of Timothy M. Kolman & Associates, 225 N. Flowers Mill Road, Langhorne, PA 19047 pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer authorized by law to administer oaths. The deposition will continue from day to day until completed. You are invited to attend and participate therein.

TIMOTHY M. KOLMAN AND ASSOCIATES

By:



Wayne A. Ely, Esquire

November 8, 2007

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

DIANE ROSETSKY

Plaintiff,

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NATIONAL BOARD OF MEDICAL
EXAMINERS OF THE UNITED STATES
OF AMERICA, INC.

Defendant.

CIVIL ACTION

No. 07-cv-3167

NOTICE OF DEPOSITION

Please take notice that on **Thursday, November 15, 2007**, beginning at **5:00 P.M.** counsel for Plaintiff will take the deposition on oral examination of **Debbie Shelmire**. The deposition will be held at the offices of Timothy M. Kolman & Associates, 225 N. Flowers Mill Road, Langhorne, PA 19047 pursuant to the Federal Rules of Civil Procedure, before a notary public or other officer authorized by law to administer oaths. The deposition will continue from day to day until completed. You are invited to attend and participate therein.

TIMOTHY M. KOLMAN AND ASSOCIATES

By:



Wayne A. Ely, Esquire

November 8, 2007

EXHIBIT “B”

TROIANI/KIVITZ, L.L.P.

ATTORNEYS AT LAW

DOLORES M. TROIANI, ESQUIRE
BEBE H. KIVITZ, ESQUIRE

KIMBERLY C. GIBNEY, ESQUIRE
OF COUNSEL

DEVON OFFICE:
38 NORTH WATERLOO ROAD
DEVON, PA 19333

(610) 688-8400
FAX (610) 688-8426
REPLY TO DEVON OFFICE

PHILADELPHIA OFFICE:
THE SOVEREIGN BUILDING
714 MARKET STREET, SUITE 205
PHILADELPHIA, PA 19106

(267) 765-1598
FAX (215) 634-6195

November 8, 2007

Rufus A. Jennings, Esquire
Timothy M. Kolman & Associates
225 North Flowers Mill Road
Langhorne, PA 19047

RE: Diane Rosetsky v. National Board of Medical Examiners
U.S. District Court for the Eastern of District of Pa Civil Action No: 07-3167

Dear Mr. Jennings:

Please be advised that I will be in depositions on November 15, 2007 in Quakertown, PA in Steich vs. Acorn, et al., Case No: 06-CV-3790 and therefore am unavailable for depositions in Rosetsky. I am in deposition today, and understand that you have noticed these for the first time. This is also unreasonable notice, and does not take into account the availability of any of the deponents. If you wish to schedule depositions on another day, please let us know immediately and we will check everyone's availability, keeping in mind that discovery currently closes on November 16, 2007.

Very truly yours,

Bebe H. Kivitz
Bebe H. Kivitz

BHK/cap
DICTATED BUT NOT READ
cc: Shelley Green, Esquire

*** FAX TX REPORT ***

TRANSMISSION OK

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TROIANI/KIVITZ, LLP. ATTORNEYS AT LAW

**Bebe H. Kivitz, Esquire
Troiani/Kivitz L.L.P.
38 North Waterloo Road
Devon, Pennsylvania 19333
Tel: (610) 688-8400
Telefax: (610) 688-8426**

TO: Rufus A. Jennings, Esquire
NO: (215) 750-3138
FROM: Bebe H. Kivitz, Esquire
TROIANI/KIVITZ, L.L.P.
DATE: November 8, 2007
SUBJECT: Diane Rosetsky v. National Board of Medical Examiners
